IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6352 OF 1996

D. Y. Thorat ... Petitioner

versus

Secretary to the Govt.
of Maharashtra and ors. ... Respondents

...

Mr. S.P. Kanuga, for the Petitioner.

Mrs. S.S. Bhende, A.G.P., for Respondents Nos. 1 to 4.

...

CORAM : A.M.KHANWILKAR,J.

19th August 2004

P.C.:

. Heard Counsel appearing for the parties. The order, which is impugned in this writ petition, is dated August 16, 1996 passed by the Secretary to the Government of Maharashtra, Home Department (Transport), Mantralaya, Mumbai, in Revision No. FLR 1296/RA-3/EXC II. The Petitioner had made an application to the

Collector for revalidation of FL-II licence. The Collector by communication dated October 9, 1995, informed the Petitioner that his application cannot be granted. That communication does not contain any reason as to why revalidation of FL-II licence as prayed cannot be granted. Be that as it may, the Petitioner carried the matter in appeal before the Commissioner of State Excise, Maharashtra State, Mumbai. The appellate authority by order dated December 22, 1995, was pleased to dismiss the appeal preferred by the Petitioner. In para 3 of its decision, the appellate authority has referred to certain materials to justify the order of the Collector. The grievance made before this Court is that the materials referred to in para 3 of the order were never informed to the Petitioner nor any extract or copy thereof was made available to the Petitioner before the hearing of the appeal and the same has been mentioned only in the decision of the Commissioner. Against this decision, the Petitioner carried the matter in revision before the State Government, which has also been dismissed. In other words, the fundamental grievance made in this petition is that the order passed by the authorities below suffers from the

vice of violation of principles of natural justice. It is contended that in the first place, the Collector gave no reasons why the application preferred by the Petitioner was rejected. Moreover, the appellate authority has referred to certain materials in the order to justify the order of the Collector without providing copies thereof to the Petitioner or, for that matter, making the Petitioner aware about the said record, so as to afford opportunity to the Petitioner to offer explanation, if any. There is substance in the grievance made on behalf of the Petitioner. If it is so, the orders will have to be set aside being in violation of the principles of natural justice. The appropriate course, to my mind, is to relegate the parties before the authority, namely, the Commissioner of State Excise, Maharashtra State, Mumbai, who shall decide the appeal on its own merits in accordance with law. In the event the appellate authority intends to rely on any materials to hold against the Petitioner, those materials ought to be made available to the Petitioner one week before the hearing of the appeal, so that the Petitioner can offer explanation, if any, in the context of

those materials at the time of hearing, if so advised. Accordingly, this petition succeeds. The impugned orders passed by the appellate authority and the revisional authority are set aside and the appeal is restored to the file of the appellate authority to be decided in accordance with the observations made hereinabove. Appeal to be finally disposed of as expeditiously as possible, preferably within three months from the date of receipt of writ of this Court. No order as to costs.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)